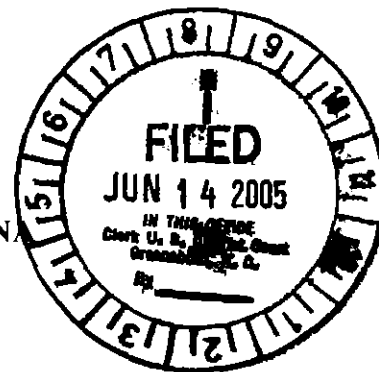


IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



Wallace Anthony Gaither,

Petitioner,

v.

United States of America,

Respondent.

1:05CV00538
1:98CR202-1

ORDER OF DISMISSAL WITHOUT PREJUDICE
TO PETITIONER FILING A NEW MOTION

Petitioner, a federal prisoner, has submitted a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This motion cannot be further processed for the following reasons:

1. An insufficient number of copies was furnished. Petitioner must submit an original and two copies. Rule 3(a), Rules Governing § 2255 Proceedings. Note that at least one of the copies must bear petitioner's original signature.
2. Petitioner did not complete the forms: In his motion, the petitioner is required to specify his grounds for relief and set out the facts which the petitioner claims support each ground. See Rules Governing Section 2255 Proceedings 2(b). The Court will not search for facts in briefs or other documents. The facts must be set out in paragraph 12 of the Section 2255 forms. Id. Continuation pages are permitted if they are clearly labeled and attached to the end of the motion form. Petitioner has in effect combined the motion form and his memorandum of law. This is improper. The memorandum of law should be a separate document.
3. Petitioner has also improperly submitted proposed evidence in the form of exhibits to his motion.

If petitioner wants to submit evidence, such as reports or other documents, he must request and receive permission from the court after the petition has been accepted and filed.

In such an event, petitioner must file a motion requesting permission to file evidence and serve it on the United States Attorney. Each piece of evidence must be marked (e.g., "Exhibit 1"), and separately discussed in the motion by explaining each exhibit's relevance to the claims in his petition.

Because of these pleading failures, this particular motion will be dismissed, but without prejudice to petitioner filing a new motion properly following the 28 U.S.C. § 2255 forms, correcting the defects of the present motion.

Petitioner has also included in his submission a motion to toll the time limitation for filing his section 2255 motion. Absent extraordinary circumstances, the one-year period cannot be tolled. Harris v. Hutchinson, 209 F.3d 325 (4th Cir. 2000). That motion will be denied.

IT IS THEREFORE ORDERED that this action be filed and dismissed sua sponte without prejudice to petitioner filing a corrected motion on the proper § 2255 forms. To further aid petitioner, the Clerk is instructed to send petitioner § 2255 forms and instructions.

IT IS FURTHER ORDERED that petitioner's motion to toll the time limitation be denied.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: June 13, 2005